

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNATHAN HOWARD KIGER,

Plaintiff,

v.

TRACY JOHNSON, et al.,

Defendants.

No. 2:23-cv-1263 KJM DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants improperly handled his legal mail, deprived him the right to access the court, failed to provide him with adequate medical treatment, and retaliated against him in violation of his constitutional rights. Presently before the court is plaintiff's motion for an extension of time to file an amended complaint (ECF No. 10) and motion to appoint counsel (ECF No. 11).

I. Motion for an Extension of Time

Plaintiff seeks an additional sixty days to file an amended complaint. (ECF No. 10.) In support of the request, he cites mail delays, limited access to the law library, and the failure to prison officials to respond to his request for information. Good cause appearing, the court will grant the motion.

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1 **II. Motion to Appoint Counsel**

2 Plaintiff has also moved for the appointment of counsel. (ECF No. 11.) Therein he states,
3 he is unable to afford counsel, his imprisonment prevents him from obtaining information
4 required to identify defendants in the amended complaint, the issues involved in the case are
5 complex requiring significant research and investigation, he has limited knowledge of the law,
6 trial will involve conflicting testimony and counsel would ensure he receives a fair trial. (Id. at 1-
7 2.)

8 The United States Supreme Court has ruled that district courts lack authority to require
9 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490
10 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the
11 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
12 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

13 The test for exceptional circumstances requires the court to evaluate the plaintiff's
14 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
15 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
16 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
17 common to most prisoners, such as lack of legal education and limited law library access, do not
18 establish exceptional circumstances that would warrant a request for voluntary assistance of
19 counsel.

20 In the present case, the court does not find the required exceptional circumstances.
21 Plaintiff has cited nothing more than circumstances common to most inmates and are insufficient
22 to warrant the appointment of counsel. The court notes that plaintiff states prison officials have
23 not responded to his requests for information. However, he has not indicated when he submitted
24 a request for information. To the extent prison officials refuse to respond to his requests or
25 indicate they cannot provide the requested information, plaintiff may file a renewed request for
26 assistance in obtaining the necessary information. Accordingly, the motion to appoint counsel
27 will be denied without prejudice to its renewal at a later stage of the proceedings.

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1 **III. Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's motion for an extension of time (ECF No. 10) is granted;
- 4 2. Plaintiff shall file an amended complaint within sixty days of the date of service of this
5 order; and
- 6 3. Plaintiff's motion for the appointment of counsel (ECF No. 11) is denied without
7 prejudice.

8 Dated: December 5, 2023



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10 DEBORAH BARNES
11 UNITED STATES MAGISTRATE JUDGE

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